

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 443 of 2016

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Maheswar Panda, aged about 58 years, S/o Late Sridhar Panda, presently working as Section Supervisor CO Office of Chief Postmaster General, Odisha, At/PO/PMG Square, Bhubaneswar, Dist.-Khurda.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Department of Posts, Dak Bhawan, New Delhi – 110001.
2. CPMG, Odisha circle, PMG Square, Bhubaneswar, At/PO/Bhubaneswar, Dist.-Khurda, Pin – 751001.
3. Director, Postal Services, Odisha Circle, Bhubaneswar, At/PO/Bhubaneswar, Dist-Khurda, Pin-721001.

.....Respondents

For the applicant : Mr.S.Mohanty, counsel

For the respondents: Mr.C.M.Singh, counsel

Heard & reserved on : 13.11.2019

Order on : 24.12.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

In this OA the applicant has prayed for the following reliefs :

“Under such circumstances it is humble prayed that this Hon'ble Tribunal may kindly be pleased to admit the case and issue notice to the respondents to file their show cause as to why the case of the applicant shall not be allowed and after hearing the parties, the case of the applicant be allowed by quashing Annexure-8 of the Original Application and direction be given to the respondents more particularly to respondent No.2 to give promotion to the applicant to the cadre of HSG-II w.e.f. 1.4.2000 and to the cadre of HSG-I w.e.f. 1.4.2003 respectively along with all financial and consequential benefit and the circle office gradation list in respect of the applicant be corrected/modified within a stipulated period.

And/or pass any other order(s) which deems fit and proper for adjudication of the case.

And for the act of kindness, the applicant shall be ever prayed.”

2. The applicant, being a person with physical handicap, is aggrieved since although he was allowed notional promotion to the LSG cadre with effect from 1.4.1997 (vide order at Annexure-3 of the OA) and actual promotion to LSG w.e.f. 10.6.2015 (vide the order at Annexure-4 of the OA), but consequential promotions to HSG-II and HSG-I grades have not been allowed to him before

his retirement on 31.10.2017. Learned counsel for the applicant urged at the time of hearing that as per the rules, promotion to the HSG-II grade is to be allowed after 3 years from the date of promotion to the LSG grade i.e. from 1.4.2000, considering notional promotion to LSG w.e.f. 1.4.1997 and then to HSG-I grade after 3 years from the date of promotion to HSG-II grade i.e. w.e.f. 1.4.2003. The applicant had filed the OA No. 679/2015, which was disposed of vide order dated 4.10.2015 (Annexure-7 of the OA) with a direction to the respondents to dispose of the applicant's representations claiming promotion to HSG-II and HSG-I grades w.e.f. 1.4.2000 and 1.4.2003 respectively. In compliance of the direction of the Tribunal, the respondent no. 2 has considered the case of the applicant and rejected the same vide the order dated 22.1.2016 (Annexure-8 of the OA).

3. It was submitted by learned counsel for the applicant that the applicant had earlier approached the Chief Commissioner for Persons with Disabilities, when the benefit of reservation for physically handicapped persons was not allowed to the applicant in respect of promotion to the LSG grade. After hearing all concerned, the Chief Commissioner, vide his order dated 23.4.2010 (Annexure-1 of the OA), allowed the prayer of the applicant and the respondents were directed to consider the case of the applicant against the promotional post of LSG reserved for persons with physical disabilities by holding review DPC and if found suitable, allow him notional promotion retrospectively. The order was unsuccessfully challenged by the respondents before Hon'ble High Court. Then the said order of the Chief Commissioner was implemented and vide order dated 26.2.2015, the applicant was allowed notional promotion w.e.f. 1.4.1997. Thereafter he was posted to LSG post vide order dated 9.6.2015 (Annexure-4) and he joined against LSG post on 10.6.2015. It is stated that as per the notification dated 19.11.2013, the eligibility for promotion to HSG grades is three years of service in LSG grade and that the juniors of the applicant have been promoted to HSG grade, while ignoring the applicant's case.

4. It was further urged by the applicant that the notification dated 19.11.2013 is prospective in nature and it is not applicable to the case of the applicant, who will be covered by the Recruitment rules, 1976 (Annexure-10 of the OA) which was prevalent prior to 19.11.2013. It was also stated in the OA that there is no need to implead anyone in the OA as no other employee would be affected if the applicant is allowed promotion claimed by him. There is no one senior to him in the cadre who has got promotion to HSG grade and no one would be affected if the applicant is allowed to be promoted to HSG grade. It is also argued that the consequential benefits of the notional

promotion w.e.f. 1.4.1997 as per the order of the Chief Commissioner at Annexure-1 are not being allowed by the respondents.

5. Learned counsel for the respondents was heard. He submitted that para 3 and 7 of the Counter filed by the respondents explain the position. Para 7 of the Counter states as under:-

“That in reply to the averments made in para 4.8 of the OA it is humbly submitted that in obedience to the order dated 23.04.2010 passed by the Hon'ble Chief Commissioner of Persons with Disabilities, New Delhi in Case No.35/1021/08-09 dated 06.03.2009, the applicant was promoted to the cadre of LSG notionally w.e.f. 01.04.1997 and joined in the post of Section Supervisor (Estt/Plg), CO, Bhubaneswar on 10.06.2015. As he is not fulfilling the criteria for promotion to the cadre of HSG-II & HSG-I issued vide Ministry of Communication & IT, Department of Posts notification dated 19.11.2013, published in The Gazette of India dated 22.11.2013 and communicated vide Postal Directorate letter No.44-19/2009-SPB-II dated 01.01.2014, the competent authority has considered the promotion of the applicant to the cadre of HSG-II & HSG-I on the basis of notional promotion and rejected being found not fulfilling the required criteria mentioned therein. A copy of the said letter dated 01.01.2014 is annexed herewith as Annexure-R/1.”

It was also submitted by learned counsel for the respondents that as the applicant was actually posted against LSG post on 10.6.2015 and by the time he retired on 31.10.2017, he had not completed 3 years of working against the LSG grade post and hence, he was ineligible for promotion to the grade of HSG-II.

6. It is noticed from the above contentions in the Counter as well as the order dated 22.1.2016 (Annexure-8 of the OA) that the grounds advanced by the respondents for rejecting the applicant's claim is the notification dated 19.11.2013 by which the revised Recruitment rules were notified vide the copy at Annexure-R/1 of the Counter. The applicant contested the averment by stating that the provisions of the notification dated 19.11.2013 are not applicable to his case as he was notionally promoted to LSG on 1.4.1997, for which, the recruitment rules, 1976 (Annexure-10), prevalent prior to 19.11.2013 would be applicable to his case.

7. It is noticed that the Recruitment Rules, 1976 also stipulated the requirement of 3 years of regular service in LSG grade for promotion to HSG-II grade and also stipulate 3 years of service in HSG-II grade for promotion to HSG-I grade. The rules notified on 19.11.2013 (Annexure-R/1) also stipulate 3 yaers of service in LSG and HSG-II grade for promotion to HSG-II and HSG-I grades respectively as far as the applicant was concerned. Hence, if the actual date of posting of the applicant to the LSG grade (i.e. 10.6.2015) is taken for the purpose of his eligibility for promotion to next higher grade i.e. HSG-II, then he will not be eligible for such promotion for non-completion of 3 years of service in LSG before his retirement on 31.10.2017. In view of clear stipulations in the rules, the period of notional promotion to LSG cannot be

taken as applicant's experience in service in LSG grade, for which the date of his actual posting to LSG grade will be relevant. It is noted that for the notional promotion period, the applicant had not drawn the actual pay of the LSG grade although for the purpose of pay fixation, the date of notional promotion was taken into account. Therefore, the stipulation of the requirement of three years service in LSG grade for next promotion to HSG-II grade as per the Recruitment Rules, will not include the period of notional promotion. There is no rule of circular furnished by the applicant to show that the period of notional promotion can be taken for the purpose of determining the qualifying service in LSG grade required for promotion to HSG-II grade. Hence, such contentions of the applicant are not acceptable.

8. However, taking into account the facts and circumstances of this case, it is clear that the applicant's case for promotion to LSG grade was not implemented by the respondents within the stipulated time for which the applicant could not be promoted prior to 10.6.2015. The order of the Chief Commissioner dated 23.4.2010 (Annexure-1 of the OA) was challenged by the respondents before Hon'ble High Court in W.P. (C) No. 20084/2013, which was disposed of by Hon'ble High Court vide order dated 20.1.2014 (Annexure-2 of the OA) with following directions to the respondents:-

"In view of the above settled position of law as there is no illegality or irregularity in the direction issued by the Deputy Chief Commissioner in the impugned order, this Court is not inclined to interfere with the impugned order. Accordingly, the writ petition is disposed of with a direction to the petitioner to comply with the impugned order within a period of eight weeks."

9. The above order of Hon'ble High Court was implemented by the respondents without any challenge. Hence, the above order of Hon'ble High Court has attained finality in this case. As per the order dated 20.1.2014, compliance of the said order was required, by considering notional promotion of the applicant to the LSG grade retrospectively and posting him against the post of LSG grade within 8 weeks i.e. by 20.3.2014, if the applicant would have been found suitable for promotion. Had the respondents implemented the order dated 20.1.2014 (Annexure-2 of the OA) within the time as stipulated by the Hon'ble High Court, then the applicant would have been posted in LSG grade by 20.3.2014, since he was found suitable for promotion to LSG and in that case, he would have completed 3 years of service in LSG on 20.3.2017, required to fulfill the eligibility condition stipulated in the rules for promotion to HSG-II grade. But the respondents have delayed implementation of the order dated 20.1.2014 of Hon'ble High Court. There is nothing on record to show that the respondents had moved Hon'ble High Court requesting for more time to implement the order dated 20.1.2014 giving the reasons for more time. The delay in complying the order dated 20.1.2014 till 9.6.2015, when the applicant

was issued a posting order against a LSG post (vide order at Annexure-4), has adversely affected the eligibility of the applicant for subsequent promotion to HSG-II grade. There is no whisper about the reason for such delay in the respondents' pleadings on record. Hence, for such delay on the part of the respondents, which is not in accordance with the order dated 20.1.2014 of Hon'ble High Court, the applicant should not be made to suffer.

10. In view of the discussions above and in the interest of justice, the applicant's service in the LSG grade be treated to be from 20.3.2014 (instead of 10.6.2015) and he should be treated to have completed 3 years of service in LSG grade as on 20.3.2017, when the applicant was in service. The respondents are, therefore, directed to consider the case of the applicant for promotion to HSG-II grade w.e.f. 1.4.2017 by holding a review DPC, treating him to have completed 3 years of service in LSG as on 20.3.2017 for the purpose of his eligibility for promotion to HSG-II grade as per the rules and if he is found suitable for promotion by the review DPC, he will be allowed the benefit of notional promotion to the HSG-II grade w.e.f. 1.4.2017, with consequential differential retirement benefits as per the provisions of the applicable rules. The respondents are further directed to complete the actions as stated above as quickly as possible and communicate their decision in this regard through a speaking order to the applicant within four months from the date of receipt of a copy of this order.

11. The OA is allowed in part as above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)